



CITY OF HAYWARD AGENDA REPORT

AGENDA DATE 11/24/98

AGENDA ITEM 8

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Council Member Hilson

SUBJECT: Public Utility Decision on Access to Rights-of-Way

Recommendation:

It is recommended that the City Council adopt a resolution joining the City and County of San Francisco's Petition for Reconsideration of the California Public Utilities Commission Decision 98-10-058.

Introduction:

On October 22 1998, the California Public Utilities Commission (CPUC) issued Decision 98-10-058 regarding telecommunications carrier access to public rights-of-way. After reviewing the decision, the City of San Francisco has concluded that it may have significant impact on local jurisdictions and therefore is preparing a Petition for Reconsideration. Considering the sweeping impact of the decision, the City of San Francisco has requested that local jurisdictions support its efforts to gain reconsideration by signing on to its Petition.

Discussion:

CPUC Decision 98-10-058 adopts rules governing the nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way applicable to all competitive local telecommunications carriers (CLCs). Its stated purpose is to assure access to CLCs so that broadly available facilities-based competition may succeed.

We have been informed that the Petition for Reconsideration will opine that while the purpose of the decision may be laudable, language contained in its 120+ pages appears to overreach the

CPUCs jurisdiction, establishes new levels of unwarranted bureaucracy, negatively impacts local governments' ability to regulate and protect their rights-of-way and imposes new restrictions on the ability of cities to make decisions regarding the use of publicly owned property. As an illustration of the foregoing, the Petition will point out that in one portion of its decision the CPUC attempts to establish itself as a "pre-trial" tribunal to adjudicate right-of-way disputes even though it recognizes that it lacks jurisdiction to render rulings that would bind local governments. It is suggested that such an approach would add a layer of unnecessary bureaucracy and could easily lead to confusing advisory opinions which the utilities may attempt to have a court enforce. In addition, the Petition will point out that another portion of the decision attempts to interfere with the ability of local governments to contract with service providers regarding the usage of publicly owned property. Such usurpation of the rights of local government to control its property does not appear to serve any public purpose and thus is inappropriate.

Conclusion:

Considering the potential negative impacts of the CPU decision and its unwarranted intrusion into the rights of local governments to control their rights-of-way and property, it is recommended that the Council join in the City of San Francisco's Petition for Reconsideration of California Public Utilities Decision 98-10-058.

DRAFT

HAYWARD CITY COUNCIL 

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HAYWARD JOINING IN THE CITY AND COUNTY OF SAN
FRANCISCO'S PETITION FOR RECONSIDERATION OF
CPUCs DECISION 98-10-058**

WHEREAS, the California Public Utilities Commission (CPUC) issued
Decision 98-10-058 regarding access to public rights-of-way; and

WHEREAS, the City of San Francisco has concluded that it may have
significant impacts on local jurisdictions and is preparing a Petition for Reconsideration; and

WHEREAS, the City of San Francisco, considering the sweeping impact of the
decision, has requested that local jurisdictions support its efforts to gain reconsideration by
signing onto their Petition; and

WHEREAS, language contained in its 120+ pages appears to by overreaching,
establishes new levels of unwarranted bureaucracy, could negatively impact local governments'
ability to regulate and protect its rights-of-way and would impose new restrictions on the
ability of cities to make decisions regarding the use of publicly owned property.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of
Hayward will join in the City of San Francisco's Petition for Reconsideration of California
Public Utilities Decision 98-10-058.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 1998

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward